

1986

State of Utah v. Caleen Lowe Jones : Brief of Appellant

Utah Supreme Court

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DOCKET NO. 860250 IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,)	
)	
Plaintiff-Respondent,)	
)	
vs.)	Case No. 860250
)	
CALEEN LOWE JONES,)	Category No. 2
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

Appeal from a conviction of a second degree felony of child abuse and a sentence of a minimum term of incarceration of one year, not to exceed fifteen years, in the Fifth Judicial District Court, in and for Iron County, State of Utah, the Honorable J. Harlan Burns, District Judge, Presiding.

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Clerk, Supreme Court, Utah

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vs.)	Case No. 860250
)	
CALEEN LOWE JONES,)	
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

ISSUES PRESENTED ON APPEAL

1. Did the trial court err in allowing an expert witness to testify as to his opinion that a combination of physical injuries, as defined in 76-5-109(1)(b), Utah Code Annotated, 1953, as amended, together with an environmental setting created a substantial risk of death as used in 76-5-109(1)-(c), Utah Code Annotated, 1953, as amended.

2. Was there sufficient evidence to convict the Defendant of child abuse, a second degree felony, or should the conviction have been for child abuse, a class A misdemeanor?

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a conviction of Child Abuse, a Second Degree Felony.

DISPOSITION IN THE LOWER COURT

On February 27, 1986, the Appellant was convicted by jury verdict after a four and one-half day trial in Iron County.

The Appellant requested the preparation of a Pre-Sentence Report and on April 1, 1986, she appeared before the Court and was sentenced to a term of not less than one year nor more than fifteen years in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

The Appellant seeks a reversal of her conviction and release from incarceration, or, in the alternative, a reduction in the severity of the offense from a Second Degree Felony to a Class A Misdemeanor.

STATEMENT OF FACTS

The Defendant/Appellant, Caleen Lowe Jones, together with her sixteen month old son, Jacob Hart Jones, moved into a trailer house located in the Cedar Valley area of Iron County some seven miles northwest of Cedar City in late April of 1985 (Transcript, Vol. 4, 56-57). The other occupant of the house trailer was James Chad Anderson, a Co-Defendant in the action who, during the trial, pled guilty to the third degree felony offense of child abuse (T.169-171) and was later sentenced to the Utah State Prison for a period of time not to exceed five years, with the recommendation of the Court to the Board of Corrections that Mr. Anderson serve the entire five years. On May 19, 1985, while the Defendant/Appellant, Caleen Lowe Jones, was at the Valley View Medical Center in Cedar City having a broken hand cast by emergency room personnel (T. Vol. 4, 62), James Chad Anderson had the physical care and supervision of Jacob Hart Jones (T.170). At that time, Jacob Hart Jones was burned on his

lower left leg by contacting the hot door of a clothes dryer located in the bathroom area of the home (T.97, 170). It is this burn together with an injury to the bridge of the nose to which the Defendant, James Chad Anderson, entered his plea of guilty (T.170). The burn was a large one and second degree in severity (T.99).

On May 20, 1985, the Defendant/Appellant noticed the presence of the burn on her son's leg and took him to the Valley View Medical Center where he was treated by nurses and Dr. Michael Stultz in the emergency room of the Valley View Medical Center (T.96). The nurses testified that the child appeared to have little separation anxiety when taken from his mother and exhibited stoic behavior when his burn was washed and bandaged (T.421-423). This behavior was described by the nurses on subsequent visits to the Valley View Medical Center for follow-up treatment on May 21, 22, and 23rd, though on May 23rd, the Co-Defendant James Chad Anderson took the child into the hospital (T.427-428, 439-442). During the period of time from May 20, 1986, until May 25, 1986, pursuant to the instruction of law enforcement officials and the instructions of Mr. Kerry Hedin (T.459) of the Division of Family Services, the Defendant/Appellant, Caleen Lowe Jones, resided outside of the trailer house that she had shared with James Chad Anderson. During that time she and her son lived with a cousin, though they often visited in the trailer house occupied by Mr. Anderson (T. Vol. 4, 74). On May 25, 1985, the Defendant/Appellant, Caleen Lowe

Jones, moved back into the trailer house with James Chad Anderson (T.80). On May 30, 1985, near midnight, Mrs. Jones and the Co-Defendant, James Chad Anderson, rushed Jacob Hart Jones back to the emergency room of the Valley View Medical Center. At the time that Jacob Hart Jones was taken to the Valley View Medical Center emergency room, he was in full cardio-pulmonary arrest (T.394-395). The personnel at the medical center were able to resuscitate (T.201) Jacob Hart Jones and he was thereafter transferred to Primary Childrens Hospital in Salt Lake City where he died on June 1, 1985, the doctors having determined that the child was brain-dead (T.274). Certain additional injuries were observed when the child returned to Valley View Medical Center on May 31, 1985, which were not observed when the child was seen on May 20, 1985.

The office of the State Medical Examiner determined that the child died of natural causes, noting the presence of Neisseria meningitis bacteria in the blood stream, together with pancreatitis and pneumonia (T.349-350). Witnesses offered by the State expressed their opinion that the child died from severe edema of the brain (T.350). The testimony of the Co-Defendant James Chad Anderson was that on the night of May 30, 1985, he put the child to bed and when checking on the child some half an hour to forty five minutes later found that Jacob Hart Jones had stopped breathing.

At the trial of the case, Dr. William Martin Palmer of the Primary Childrens Medical Center testified that none of the

injuries found on Jacob Hart Jones (ranging from the large burn inflicted by the dryer to small burns on the fingers and including various bruises and excoriations on the soles of the feet) would create a permanent disfigurement, protracted loss or impairment of a function of a body member, limb or organ, or substantial risk of death (T.318-320). However, Dr. Palmer was allowed to testify, over the objection of counsel, that the combination of the physical injuries noted on Jacob Hart Jones, together with other signs of behavior noted by the hospital personnel of the Valley View Medical Center, created for Jacob Hart Jones an environment in which he was subjected to a substantial risk of death (T.358-361).

SUMMARY OF ARGUMENTS

1. The trial court erred in allowing an expert witness to testify as to his opinion that a combination of physical injuries as defined in 76-5-109(1)(b), Utah Code Annotated, 1953, as amended, together with an environmental setting created a substantial risk of death as used in 76-5-109(1)(c), Utah Code Annotated, 1953, as amended.

2. There was insufficient evidence to convict the Defendant of child abuse, a second degree felony, and therefore any conviction should have been for no more than a class A misdemeanor of child abuse.

ARGUMENT

I

THE TRIAL COURT ERRED IN ALLOWING AN EXPERT WITNESS TO

TESTIFY AS TO HIS OPINION THAT A COMBINATION OF PHYSICAL INJURIES AS DEFINED IN 76-5-109(1)(b), Utah Code Annotated, 1953, as amended, TOGETHER WITH AN ENVIRONMENTAL SETTING CREATED A SUBSTANTIAL RISK OF DEATH AS USED IN 76-5-109(1)(c), Utah Code Annotated, 1953, as amended.

The central issue on appeal in this particular case is the construction of the statute 76-5-109, Utah Code Annotated, 1953, as amended. That specific statute is set forth as follows:

76-5-109. Child abuse.

(1) As used in this section:

(a) "Child" means a human being who is 17 years of age or less;

(b) "Physical injury" means impairment of the physical condition including, but not limited to, any contusion of the skin, laceration, failure to thrive, malnutrition, burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury causing bleeding, or any physical condition which imperils a child's health or welfare;

(c) "Serious physical injury" means any physical injury which creates a permanent disfigurement; protracted loss or impairment of a function of a body member, limb or organ, or substantial risk of death.

(2) Any person who inflicts upon a child serious physical injury or, having the care and custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

(a) If done intentionally or knowingly, the offense is a felony of the second degree;

(b) If done recklessly, the offense is a felony of the third degree;

(c) If done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care and custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

(a) If done intentionally or knowingly, the offense is a class A misdemeanor;

(b) If done recklessly, the offense is a class B misdemeanor;

(c) If done with criminal negligence, the offense is a class C misdemeanor.

(4) Criminal actions under this section may be prosecuted in the county or district where the offense is alleged to have been committed, where the existence of the offense is discovered, where the victim resides, or where the defendant resides.

The State's theory in this case is best set out on page 358 of the Trial Transcript where the prosecutor stated:

Q. Do you have an opinion, then, as to whether or not -- well, let me back up.

In addition that we are also considering the original physical injuries, burns and bruises to Jacob Hart Jones, is that correct?

A. Yes.

Q. Okay. All those factors combined, do you have an opinion, then, as to whether or not those injuries, taken in conjunction with the other circumstances I just discussed, presented a risk, a substantial risk of death to the child or person of Jacob Hart Jones?

A timely objection was made to the form of this question and to the State's theory in presenting this evidence to the jury by using a combination of factors to define certain injuries as creating a "substantial risk of death" which is a portion of the definition of "serious physical injury" in 76-5-109(1)(c), Utah Code Annotated, 1953, as amended.

It is the contention of the defense that the injuries observed on the person of Jacob Hart Jones, which consisted of bruises, lacerations, and burns, did not either individually or together create a "substantial risk of death" as defined in the

statute.

The rules of statutory construction in criminal cases are very clear. 76-1-106, Utah Code Annotated, 1953, as amended, states:

The rule that a penal statute is to be strictly construed shall not apply to this code, any of its provision, or any offense defined by the laws of this state. All provisions of this code and offenses defined by the laws of this state shall be construed according to the fair import of their terms to promote justice and to effect the objects of the law and general purposes of section 76-1-104.

The above statute was followed and approved in State v. Archuletta, 526 P.2d 911 (Utah 1974). In that case Justice Ellett wrote, "Even though the rule of strict construction of a criminal statute is not the law in Utah, there is nothing to construe where there is no ambiguity in the statute." There is no ambiguity in subsection (c) of 76-5-109(1), Utah Code Annotated, 1953, as amended. The statute classifies a number of additional factors which enhance "physical injuries" to reach the status of "serious physical injury." There can be no construction of the definition of "serious physical injury" that would allow a combining of simple "physical injuries" in order to create a "substantial risk of death."

It would seem that the State's theory in this case requires additional statutory language before it can be presented to a jury as it was in this trial. Under the State's theory, "serious physical injury" would have to be defined as "any physical injury or combination of injuries which creates a

permanent disfigurement; protracted loss or impairment of a function of a body member, limb or organ, or substantial risk of death". The statute at the present time does not have the language which is underlined above. However, at the trial of this case the State was permitted to proceed as though such language were present and Dr. Palmer was allowed to testify that a combination of injuries and other conditions, taken together, created for Jacob Hart Jones a substantial risk of death (T.358-361).

II

THERE WAS INSUFFICIENT EVIDENCE TO CONVICT THE DEFENDANT OF CHILD ABUSE, A SECOND DEGREE FELONY, AND THEREFORE ANY CONVICTION SHOULD HAVE BEEN FOR NO MORE THAN A CLASS A MISDEMEANOR OF CHILD ABUSE.

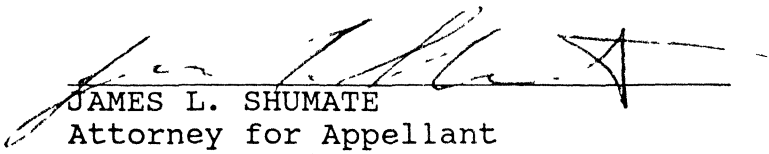
In an evaluation of the jury verdict in this case, it appears that the jury determined that the mental state of the Defendant was one of conduct done knowingly and intentionally. However, such a mental state, when coupled with injuries which are defined under 76-5-109(1)(b), Utah Code Annotated, 1953, as amended, as "physical injuries" rather than "serious physical injuries" can support only a conviction of a class A misdemeanor. The testimony of the witnesses throughout the trial was that the contusions, lacerations, and burns, did not fall under the category of "serious physical injury" in that none of these injuries created a "permanent disfigurement; protracted

loss or impairment of a function of a body member, limb or organ, or substantial risk of death". Because of the nature of the injuries sustained by Jacob Hart Jones, the record does not support a conviction of any level of offense higher than a class A misdemeanor of child abuse wherein "physical injury" was inflicted intentionally or knowingly.

CONCLUSION

Because the trial court allowed the State to continue with a line of questioning which elicited evidence beyond the scope of the statute, the jury was presented with a theory of criminal activity not found within the statute in question. Since the conduct presented to the jury is not defined as the more serious of the two crimes involved, the Defendant cannot be convicted of the second degree felony offense of child abuse. The only offense which the Defendant may be convicted of is the class A misdemeanor of child abuse and for that reason the conviction must be overturned.

Respectfully submitted this 31st day of October, 1986.

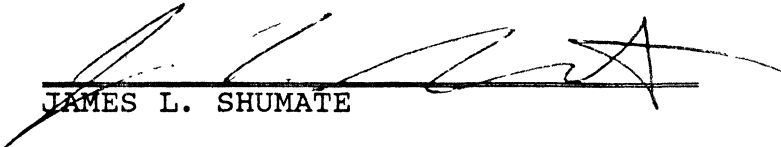


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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy

of the above and foregoing BRIEF OF APPELLANT, to Mr. Earl Dorious, Utah Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, this 31st day of October, 1986, first class postage prepaid.



JAMES L. SHUMATE